

Order 2003-4-7



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 9th day of April, 2003

Served: April 9, 2003

Joint Application of

AMERICAN AIRLINES, INC.

and

BRITISH AIRWAYS PLC

for statements of authorization under 14 CFR Part 212
to conduct reciprocal code-sharing, and for related
exemption authority under 49 U.S.C. §40109

Docket OST-2002-13861

ORDER TO SHOW CAUSE

Summary

By this order, we tentatively grant the joint application of American Airlines, Inc. and British Airways Plc for the necessary regulatory authorities to conduct certain reciprocal code-share services. We will give interested parties until April 16, 2003, to file objections to our tentative findings and conclusions, and until April 21, 2003, to file answers to any objections.

Joint Application

On November 18, 2002, American Airlines, Inc. and its affiliates (American) and British Airways Plc and its affiliates (British Airways) submitted a joint application for exemption authority under 49 U.S.C. §40109 and statements of authorization under 14 CFR Part 212 to the extent necessary to engage in certain reciprocal code-share operations (including authority to integrate this authority with the joint applicants' existing certificate, foreign air carrier permit, and exemption authorities, as applicable).¹ Specifically, American seeks to display the code of British Airways on its flights (1) between points in the United States; (2) between

¹ The affiliates specifically named by American in the joint application are TWA Airlines LLC, American Eagle Airlines, Inc., and Executive Airlines, Inc. d/b/a/ American Eagle. The affiliates specifically named by British Airways in the joint application are British Airways CitiExpress Limited and British Airways CitiExpress (Isle of Man) Limited.

points in the United States and regional airports (non-London) in the United Kingdom, either nonstop or via third-country intermediates, except on gateway route segments where both American and British Airways are designated and operating with their own aircraft; and (3) between points in the United States and points in third countries, either nonstop or via third-country intermediates. British Airways seeks to display the code of American on its flights (1) between points in the United Kingdom; (2) between points in the United States and regional airports (non-London) in the United Kingdom, either nonstop or via third-country intermediates, except on gateway route segments where both American and British Airways are designated and operating with their own aircraft; and (3) between points in the United Kingdom and points in third countries, either nonstop or via third-country intermediates.²

In support of their request, the joint applicants stated that the authority they seek is fully consistent with the U.S.-U.K. Air Services Agreement, as amended by a June 5, 1995, Memorandum of Consultations (1995 MOC); and that the Department has previously approved a number of code-sharing arrangements involving U.S. and U.K. carriers, including one in July 2000 between United Air Lines, Inc. and British Midland Airways Limited d/b/a bmi british midland (United/bmi). American and British Airways further stated that their proposed operations would provide a more efficient use of capacity in the market and, since they would be pricing their services independently, would enhance competition.³

Finally, the joint applicants stated that they would agree to standard conditions the Department has imposed on the grant of comparable code-share requests; and that their proposed operations would have no impact on American's commitments under the Civil Reserve Air Fleet (CRAF) Program.⁴

Responsive Pleadings to Initial Joint Application

Answers to the joint applicants' request were filed by Continental Airlines, Inc. (Continental); Delta Air Lines, Inc. (Delta); Northwest Airlines, Inc. (Northwest); and United/bmi. American and British Airways filed a joint reply.⁵ The City of St. Louis and the St. Louis Airport Commission (the St. Louis Parties) also filed a reply.⁶

Continental, Delta, Northwest, and United/bmi all expressed concern with the joint applicants' request in the context of the current restrictions, under the U.S.-U.K. Agreement,

² The joint applicants appended a list of the initial code-share markets they propose to serve; those markets are shown in Appendix 1 to this Order.

³ American and British Airways accompanied their request with a copy of the code-share agreement between and among the parties. The agreement, as filed at that time in the public section of Docket OST-2002-13861, contained certain redactions.

⁴ The joint applicants also stated that American would soon schedule a code-share safety audit of British Airways, consistent with the provisions of the Department's Code Share Safety Program, and would provide the results of that audit to the Federal Aviation Administration.

⁵ American also placed into the record two letters to the Secretary, co-signed by a number of Members of Congress, in support of the joint application.

⁶ The reply of the St. Louis Parties was accompanied by a motion for leave to file late. We will grant the motion.

on U.S. carrier access at London's Heathrow Airport. Continental and Delta stated that the broad code-sharing authority requested by the joint applicants would strengthen their position at London Heathrow by expanding their networks at that airport, while additional U.S. carrier access would continue to be precluded. Continental, Delta, Northwest, and United/bmi all stated their belief that approval of the joint applicants' request would remove any incentive for liberalization in the U.S.-U.K. aviation relationship.

Delta further stated that the Department must consider the repeated failure to secure a liberalized agreement with the United Kingdom, the existing competitive environment, and the effect of the joint applicants' proposal on that environment. Moreover, it stated that there have been no recent developments in U.S.-U.K. aviation relations to warrant approval. Northwest expressed concern that, given the large number of markets involved, approval would give British Airways one of the principal things it has desired: greater access to the U.S. domestic market while avoiding Open Skies competition from U.S. carriers.

Continental also asserted that the 1995 MOC on which the joint applicants rely has not become effective because there is no agreement between the United States and the United Kingdom on Heathrow access, making the code-share authority the joint applicants seek extrabilateral; and that the Department approved the United/bmi code-share referenced by the joint applicants only because of the particular circumstances of that request, specifically the added competition it would provide, and that such "unique" circumstances are lacking here.

United/bmi also stated that while American and British Airways have previously attempted to obtain authority for their various intercarrier relationships, none has been approved because of U.S. concerns over competitive limitations at Heathrow; that the Department of Justice also recognizes the risks to consumers of the American/British Airways arrangement at Heathrow; and that even United/bmi cannot effectively compete with the proposed American/British Airways code-shares, since bmi cannot offer U.S.-Heathrow services. United/bmi further stated that, because of opposition from British Airways, the United Kingdom has not offered the United States a proposal that would warrant a change in Department policy; and that even though American and British Airways state that their request is encompassed by U.S.-U.K. Agreement, competitive considerations must be included in the Department's analysis of the request. Finally, United/bmi stated that if Department were to approve the American/British Airways request, it should remove conditions it placed on the effectiveness of the United/bmi antitrust immunity.⁷

Finally, Continental and Northwest stated that the Department should require the joint applicants to provide an unredacted version of their code-share agreement for review, and Continental and United/bmi stated that there are cities listed in the application that cannot be served by the joint applicants because of agreement limitations or international policy considerations.

In reply, American and British Airways reiterated their view that the authority they seek is encompassed by the U.S.-U.K. Agreement and 1995 MOC, and that the Department is

⁷ See Order 2002-4-4.

therefore obligated to approve the request, notwithstanding U.S. carrier claims that the United States should obtain additional concessions from the United Kingdom. They stated that the absence of a formal exchange of notes finalizing the 1995 MOC is not an issue, since the Department has relied on the terms of the 1995 MOC in approving other code-share applications involving U.S. carriers. American and British Airways also stated that their code-sharing arrangement will enhance competition and stimulate traffic; that, with few exceptions, there is already “robust” competition in the markets in which they would code share; and that they are not seeking antitrust immunity for this code-sharing arrangement. Finally, with respect to procedural issues raised by the opponents to their request, American and British Airways stated that the code-sharing agreement they filed in this Docket was “virtually” unredacted; and that concerns related to bilateral limitations on any third-country operations could be met by standard Department code-share conditions.

The St. Louis Parties broadly supported the request of American and British Airways. They stated that the joint application is limited in scope; and that it is fully consistent with applicable U.S.-U.K. undertakings, so no new negotiations are necessary between the two governments. They stated that the joint application is also consistent with Department precedent and that it will provide benefits to the traveling and shipping public, will enhance competition, and will strengthen St. Louis as a major hub.

Request for Additional Information

By letter dated January 16, 2003, the Department stated that, based on our preliminary review of the application and the responsive pleadings received by that date, additional information was necessary to complete the application in order to allow us to assess the competitive implications of the proposed arrangements. In that letter, we directed American and British Airways to file in this Docket certain additional data and evidentiary information, and to serve that information on all parties to the application. We stated that, upon our determination that the application was complete, we would establish a procedural schedule for comments and such other responsive pleadings that might be necessary to allow us to act on the application.⁸

On February 28, 2003, American and British Airways filed in this Docket information responsive to our January 16 letter.⁹ The joint applicants also filed a motion for confidential treatment under Rule 12 of the Department’s procedural regulations (14 CFR §302.12) with respect to certain submissions contained in their February 28 filing. The joint applicants maintained that the documents for which they sought confidential treatment are proprietary, commercially sensitive, and confidential in nature, which qualifies for being withheld from public disclosure. The joint applicants asked that access to this material be limited to counsel and outside experts for interested parties.

⁸ See January 16, 2003, letter from Paul L. Gretch, Director, Office of International Aviation, and Randall D. Bennett, Director, Office of Aviation Analysis, in this Docket. In that letter, we also stated that, to the extent the applicants deemed it necessary, they could seek confidential treatment of the information requested as set forth in our regulations.

⁹ Among the information we requested, and which the joint applicants supplied, was an unredacted copy of the code-share agreement they had submitted with their initial application in this Docket.

Notice to All Parties

By Notice dated March 12, 2003, the Department notified the parties to this proceeding that, as of that date, we considered the application to be substantially complete, and set March 21, 2003, as the date for filing answers to the application, and March 25, 2003, as the date for filing replies.¹⁰

Additional Responsive Pleadings

Additional answers were filed by Continental, Delta, Northwest, United/bmi, and Dallas/Ft. Worth International Airport. American and British Airways filed a joint reply.¹¹ Replies were also filed by Continental, the City of Houston and the Greater Houston Partnership (the Houston Parties), and the St. Louis Parties.

In their answers, Continental, Delta, Northwest, and United/bmi generally reiterated the arguments they made in their initial answers to the joint applicants' request concerning access for U.S. carriers at London Heathrow, the impact that any approval would have on the incentive for the United Kingdom to negotiate a less-restrictive aviation agreement with the United States, and the question of the legal effectiveness of the 1995 MOC.

In addition, Continental stated that until new entrants, such as Continental, can operate to London Heathrow, the Department should deny all applications by London Heathrow incumbent carriers to engage in code-sharing activities; that in light of questions concerning the United Kingdom's "competence" within the European Union to negotiate a new agreement, Department action on the application should be withheld; and that, were we to approve the joint applicants' request, British Airways could use slots at London Heathrow to expand the scope of its alliance with American, harming the prospects for opening London Heathrow. Continental further stated that current market conditions make it more difficult for airlines to compete with American and British Airways for London traffic, given that all transatlantic carriers are seeing substantial declines in demand.

¹⁰ In our Notice, we granted immediate interim access to all documents covered by the joint applicants' motion for confidential treatment, to counsel and outside experts for interested parties who filed appropriate affidavits with the Department in advance. We took this action in order to provide all interested parties sufficient time to analyze adequately and comment fully on all material in the public and non-public record, under conditions agreed to by the joint applicants and imposed by the Department in comparable circumstances. We also stated that we would rule by separate order on the joint applicants' motion for confidential treatment. As noted below, other parties subsequently filed motions with respect to confidential material, and we will treat those motions in a like manner.

¹¹ Continental, Delta, and United/bmi filed motions for confidential treatment under Rule 12 of the Department's procedural regulations (14 CFR §302.12) with respect to certain portions of their answers, and American and British Airways filed a joint motion for confidential treatment under Rule 12 with respect to certain portions of their reply. The summary in this order of those carriers' pleadings relates only to the public (non-confidential) portions of those pleadings.

Delta also stated that the closed nature of the U.S.-U.K. market and the resulting competitive shortcomings for U.S. passengers have significant negative public interest implications for this regulatory decision. Moreover, Delta asserted that the Department should take account of the repeated unsuccessful attempts by the United States to obtain a less-restrictive relationship with the United Kingdom.

Northwest further stated that while opening London Heathrow has been the centerpiece of U.S. international aviation policy for years, there have been no new developments in the U.S.-U.K. relationship; that British Airways has become further entrenched at London Heathrow by buying additional slots and entering into additional code-share relationships with other foreign carriers; and that American and British Airways have previously attempted to join forces, and withdrew their last attempt because they objected to conditions the Department proposed to place on that code-share arrangement.

United/bmi, in reiterating its argument that, if the Department approves the request of the joint applicants, it should remove the conditions it placed on the United/bmi antitrust immunity, added that by doing so at least one alliance could compete with the domination of American and British Airways at London Heathrow, and further added that, with antitrust immunity, United/bmi and their partners could offer a less constrained competitive challenge to American and British Airways, offsetting the anticipated diversion of traffic and revenues to the joint applicants.

Dallas/Ft. Worth International Airport stated that it supports grant of the joint applicants' request. It stated that while both American and British Airways offer nonstop Dallas/Ft. Worth-London Gatwick service, approval of the joint applicants' request would benefit Dallas/Ft. Worth-area travelers with improved one-stop services beyond London, and would provide more behind traffic feeding through Dallas/Ft. Worth. Finally, it stated that approval would benefit American financially, as the carrier seeks to weather the current financial crisis affecting the U.S. airline industry.

In its reply, Continental stated that Dallas/Ft. Worth International Airport has stated in other proceedings that a primary U.S. objective should be securing nonstop access to London Heathrow and that the approval of the joint applicant's request would not further that goal; that many European cities already have either on-line or nonstop service from Dallas/Ft. Worth; and that all the U.S. points which would gain British Airways on-line connections already have on-line London connections on American via various gateways. Finally, Continental stated that, while approval would help American financially, it would make it harder for other U.S. carriers to compete for U.S.-London and U.S.-Europe traffic.

The Houston Parties shared the concerns of the U.S. carrier respondents that if the Department approved the joint applicants' request, the United Kingdom would have fewer incentives to open London Heathrow. The Houston Parties stated that any decision in this case should be consistent with the Department's goal of achieving Open Skies and access to London Heathrow for cities, carriers, and communities currently denied such access.

The St. Louis Parties reiterated their earlier position in support of the joint applicants' request, adding that the opponents have raised no issues that would warrant denial of the request; that British Airways is the principal carrier of the United States' strong ally; that as a result of the events of September 11, 2001, and the war with Iraq, American needs strengthening; and that approval would be vital to American's St. Louis hub.

In their joint reply, American and British Airways, in addition to reiterating their earlier arguments, stated that the second round of pleadings provides nothing new, and that the opponents confuse this request for code-share authority with a request for antitrust immunity. American and British Airways stated that they are not seeking antitrust immunity, thus their request does not trigger the Department's policy of requiring an Open Skies agreement to be in place as a prerequisite for approval. They also stated that Continental, Delta, Northwest, and United all have extensive code-share authority with their alliance partners, and Continental, Delta, and Northwest are pursuing a code-share/marketing alliance between and among themselves, so their opposition in this proceeding represents an attempt to impede competition. American and British Airways further stated that the opponents which seek to have the United States reopen aviation negotiations with the United Kingdom are attempting to delay action, as they are aware of the decision by European Court of Justice that draws into question the ability of member states such as the United Kingdom to negotiate aviation agreements on a bilateral basis. Finally, they stated that there should be no linkage between their application and the request of United/bmi.

Statutory and Regulatory Standards

In addition to holding the statutory authority to grant or deny exemptions under 49 U.S.C. §40109, the Department regulates code-share arrangements under Part 212 of its regulations (14 CFR Part 212). Under these rules, the Department will issue a statement of authorization, to the extent consistent with the applicant's underlying economic authority, if the proposed arrangement is in the public interest. In determining the public interest under Part 212, we routinely consider, among other things, the extent to which the authority requested is consistent with any applicable aviation agreement, whether reciprocity exists with the foreign carrier's homeland, and the benefits to U.S. carriers, passengers, and shippers under the proposed arrangement.

Tentative Decision

After careful consideration of all of the pleadings in this case, we have tentatively decided to grant the request of the joint applicants, for a two-year term, subject to standard conditions we impose on code-share authority of the type at issue here.

As an initial matter, we regard it as essential to note that the application before us here is far different in terms of the relief requested from the one the joint applicants filed in 2001 (and which they subsequently withdrew).¹² In that proceeding, American and British Airways sought antitrust immunity. They seek no such immunity here. In addition, their current

¹² See Docket OST-2001-11029, and Orders 2002-1-12 and 2002-4-4 in that Docket.

request before us is narrower in scope than the one they previously filed, as they do not seek authority to code share on each other's services on routes between U.S. gateways and London served by both applicants. Thus, the joint applicants' earlier application raised a number of serious public interest concerns, discussed in detail in the referenced Orders, that are not present in the case now before us.

We tentatively find that the code-share authority American and British Airways seek in this proceeding is encompassed by the U.S.-U.K. Agreement, as modified by the 1995 Memorandum of Consultations between the United States and the United Kingdom.¹³ As several commenters point out, the 1995 MOC has not yet formally entered into force. However, since the time that MOC was reached, both the United States and the United Kingdom have consistently applied its terms in considering code-sharing applications by carriers of the other Party. Given this consistent practice on the part of the Parties to the MOC, we tentatively find that there is no basis for a finding that, in this proceeding, the provisions of the 1995 MOC should not be observed. We further tentatively find that the MOC covers transactions of the type for which approval is sought here.

We also tentatively find that the record indicates that there will be public benefits flowing from the services proposed by the joint applicants. The benefits to be derived from international code sharing have long been a matter of established U.S. international aviation policy.¹⁴ The services that American and British Airways will be able to conduct under the authority at issue here will result in new service options being offered from many new U.S. cities, not only with respect to services to London, but to points throughout the world. We tentatively believe that these public benefits accruing to U.S. passengers, shippers, and communities support grant of the joint applicants' request.

Given our tentative findings that the authority requested is provided for in the MOC and would benefit the traveling and shipping public, the opponents of approval carry the burden to demonstrate that, on competitive grounds, the application should be disapproved. We tentatively conclude that the opponents have not shown persuasively that the request raises competitive issues that would cause us to withhold approval.

The United States does not enjoy an Open Skies relationship with the United Kingdom, and access to London's Heathrow airport is limited by the current U.S.-U.K. Agreement. Competitive considerations, therefore, take on greater decisional importance than they might under other bilateral aviation regimes. In this regard, we tentatively conclude that instead of compelling the withholding of authority, there are important competitive considerations in this case that support approval of the joint applicants' request.

¹³ Specifically, the 1995 MOC added revised paragraphs 10 and 11, and new paragraphs 12 and 13, to Section 5 "Notes Applicable to All Routes" of Annex I to the U.S.-U.K. Agreement (the original paragraphs 10 and 11 were added by a 1991 MOC). The provisions of both MOCs are being applied, by their terms, on the basis of comity and reciprocity. Paragraphs 10-13 specifically provide for the code-share authority the joint applicants seek.

¹⁴ See "Statement of United States International Air Transportation Policy," 60 FR 21841, May 3, 1995.

First, several of the objecting carriers are key participants in strong, comprehensive, and immunized international alliances. United has an extensive alliance with Lufthansa, Delta with Air France and Alitalia, and Northwest with KLM. These immunized alliances provide those carriers considerable operational and cooperative efficiencies and advantages in competing for international traffic, including pricing, scheduling, capacity coordination, and worldwide services available through the multiple members in the alliance. Second, Northwest and Continental have a comprehensive code-share alliance, United and US Airways recently implemented an extensive alliance, and Continental, Delta, and Northwest have recently entered into a multifaceted joint venture alliance. Not only do these arrangements provide the carriers with significant access to each other's domestic networks, but they also enable the carriers to integrate these alliances with their international alliances, significantly strengthening their ability to compete in international markets.

American, on the other hand, does not have an immunized arrangement with its strongest "oneworld" partner, British Airways; nor does it have a comprehensive alliance with another U.S. carrier, as Continental, Delta, Northwest, United, and US Airways do.

Our consideration of the code-share operations proposed by the joint applicants cannot ignore the competitive benefits that these international and domestic arrangements provide the objecting carriers in the context of this case. Significantly, in the transatlantic markets that are served with connecting services over a European hub, which American and British Airways serve over London, the three major U.S.-European carrier alliances would provide extensive competition to the code-share services proposed by American and British Airways. Delta and the members of the "SkyTeam" alliance, United and the members of the "Star" alliance, and Northwest and members of the "Wings" alliance, offer extensive services through European hubs for U.S.-Europe traffic and other beyond-London traffic. The immunized nature of those alliances provides those carriers with an advantage not now available to the joint applicants. Moreover, the more recent alliances among these U.S. carriers will serve to strengthen even further their competitive ability with respect to beyond-London traffic. In light of these circumstances, we tentatively conclude that the competition provided by these networks is sufficient to alleviate any competitive concerns over the joint applicants' proposed code-share operations in beyond-London markets. In fact, we have observed that there are substantial pro-competitive service benefits that accrue from inter-alliance competition to worldwide points.¹⁵ The strengthening of the joint applicants' ability to so compete with the other alliances should provide such benefits to passengers and shippers.

The competitive issues in the U.S.-Heathrow market are considerably more complex. London, particularly London-Heathrow, is one of the most important passenger origin and destination markets in the world that is virtually closed to new entrants. London has a unique demographic and geographic position in international aviation such that there is a limit to the degree to which global alliances can exert competitive discipline in the large U.S.-London markets by using connecting services via European hubs, due to the circuitry involved. It is

¹⁵ See "International Aviation Developments (Second Report): Transatlantic Deregulation, The Alliance Network Effect," October, 2000, at <http://ostpxweb.dot.gov/aviation/index.html>.

significant, however, that, in this case, the joint applicants have not requested, and are not being authorized, to code share on routes between U.S. gateways and London (Heathrow or Gatwick) served by both applicants; nor have they sought antitrust immunity with respect to their proposed operations. These two omissions from the application significantly affect the competitive impact of the services and our evaluation of the public interest issues relevant to this case.

In the context of the proposed behind U.S. gateway-London services, the operational and cooperative advantages of the domestic and international alliances of other U.S. carriers take on greater significance. Those comprehensive relationships serve to benefit the carriers' U.S.-London services, enhancing their operations in this market. United, through its alliance with US Airways, has access to US Airways' domestic network to provide additional support and competitive strength to its U.S.-London services, services that also serve London Heathrow and compete directly with the services of American and British Airways. Continental, Delta, and Northwest, which serve Gatwick from their respective hubs, similarly will have access to each other's domestic systems, and the cooperative arrangements among them will enable them to support and enhance all of their U.S.-London services and to compete more effectively for London passengers. In addition, we note that Continental currently has a code share arrangement with Virgin Atlantic, a major competitor in the London market, for services between the United States and Heathrow. That arrangement, alone and together with Continental's domestic alliance, provides Continental with the opportunity to enhance its London presence and thus provide additional competition in both the U.S.-Heathrow market and U.S.-London market overall. In these combined circumstances, although London Heathrow is not open to all competitors, on balance we tentatively conclude, given the absence of requests for code sharing in the applicants' overlap markets and for antitrust immunity, that relevant competitive considerations in this case do not warrant disapproval of the proposed code-share operations in the U.S.-London market.

Further, we note that so-called "regional routes" (*i.e.*, routes not serving London Heathrow/Gatwick) are open, as the 1995 MOC removed all restrictions on service between U.S. and U.K. points, other than London Heathrow and Gatwick. As a result, all U.S. and U.K. carriers are free to serve any city-pair market and to determine their levels of service, and we therefore tentatively conclude that the joint applicants' proposal does not raise any competitive concerns for these markets.

In reaching our tentative decision in this proceeding, we wish to make clear that we remain dissatisfied with the *status quo* of our aviation relationship with the United Kingdom. It remains our goal to replace the restrictive Bermuda 2 U.S.-U.K. aviation agreement with an Open Skies agreement. We do not, however, agree with the view of several of the respondents that our tentative decision in this proceeding, if finalized, would in any way hamper our attempts to reach such an Open Skies agreement.¹⁶

¹⁶ We also do not perceive as relevant questions about the United Kingdom's ability to negotiate a new agreement with the United States (given the recent decision by the European Court of Justice concerning the competence of Member States to engage in such negotiations). The U.S.-U.K. Agreement remains in place, and we see nothing in those questions raised that prevents us from deciding the case on the record before us.

We do not concur with United/bmi that, should we decide to grant the joint applicants' request, we should also remove the conditions we placed on the United/bmi request for approval and antitrust immunity for their alliance.¹⁷ As noted above, there is, in our view, a substantial difference between the limited American/British Airways request to conduct non-immunized code-share services, and the United/bmi request to engage in fully immunized alliance activities. Given the current state of our aviation relationship with the United Kingdom, and the facts of this case, we see no public interest reason to alter our decision in the United/bmi case.

With respect to the concern raised by Continental that some of the markets in which the joint applicants propose operations cannot be served because of bilateral or frequency limitations, we would point out that we are including in our tentative decision a standard code-share condition specifically addressing this concern (*see* condition (e) in Appendix 4 to this order).¹⁸

In view of the above, we tentatively find and conclude that (1) grant to the joint applicants of the requested exemption authority to the extent described herein is consistent with the public interest; (2) grant of the requested statements of authorization to the extent described herein is in the public interest; (3) the joint applicants are qualified to conduct the operations described above; (4) our proposed action would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975; and (5) the operations we propose to authorize in this proceeding would not impact American's commitments under the Civil Reserve Air Fleet Program.

ACCORDINGLY,

¹⁷ By Order 2002-4-4, issued April 4, 2002, the Department granted final approval and antitrust immunity for alliance agreements between and among United Air Lines, Inc. (United), British Midland Airways Limited d/b/a bmi British Midland (bmi), Austrian Airlines Österreichische Luftverkehrs AG, Lauda Air Luftfahrt AG, Deutsche Lufthansa AG, and Scandinavian Airlines System, and their wholly-owned affiliates, subject to a number of conditions, including the condition that the United States achieve, within six months from the issue date of that order (*i.e.*, by October 4, 2002), an Open-Skies aviation agreement with the United Kingdom that meets U.S. aviation policy objectives. By subsequent Orders 2002-10-6 and 2002-12-22, we extended the October 4, 2002, deadline through June 30, 2003.

¹⁸ As a final matter, we note that the joint applicants stated in their initial application that American would soon conduct a safety audit of British Airways under the provisions of the Department's Code-Share Safety Program. We remind the joint applicants that American must conduct such an audit of British Airways (*i.e.*, British Airways Plc and those affiliates which seek authority here to carry American's code and traffic); make its audit report available for review by the Federal Aviation Administration; and the FAA must advise us that it has reviewed the audit report and found it to be consistent with American's Code-Share Audit Program before we would issue any final order in this proceeding that would grant British Airways authority to carry American's code and traffic. *See* Department of Transportation Code-Share Safety Program Guidelines, pgs. 2, 9, and 10, at <http://ostpxweb.dot.gov/aviation/intav/codeshr.pdf>.

1. We tentatively grant the joint application of American Airlines, Inc., British Airways Plc, and their affiliates named in footnote 1 above, for an exemption under 49 U.S.C. §40109 and statements of authorization under 14 CFR Part 212 to the extent necessary to permit them to engage in reciprocal code-share operations, to the extent consistent with this order, and subject to the conditions set forth in Appendices 2, 3, and 4 of this order; under which (1) American would display the code of British Airways on its flights between points in the United States; between points in the United States and regional airports (non-London) in the United Kingdom, either nonstop or via third-country intermediates, except on gateway route segments where both American and British Airways are designated and operating with their own aircraft; and between points in the United States and points in third countries, either nonstop or via third-country intermediates; and (2) British Airways would display the code of American on its flights between points in the United Kingdom; between points in the United States and regional airports (non-London) in the United Kingdom, either nonstop or via third-country intermediates, except on gateway route segments where both American and British Airways are designated and operating with their own aircraft; and between points in the United Kingdom and points in third countries, either nonstop or via third-country intermediates;
2. We tentatively grant the exemption authority and statements of authorization described in ordering paragraph 1 for a period of two years;
3. We tentatively grant the request of the joint applicants to integrate the authority set forth in ordering paragraph 1 with their existing certificate, foreign air carrier permit, and exemption authorities, as applicable;
4. To the extent not granted above, we tentatively deny the joint applicants' request in this Docket;
5. We direct any interested parties having objections to our tentative findings set forth in this order, to file their objections with the Department, Dockets, Docket OST-2002-13861, U.S. Department of Transportation, 400 Seventh Street, S.W., Room PL-401, Washington DC 20590, no later than April 16, 2003; answers thereto shall be filed no later than April 21, 2003;¹⁹
6. If timely and properly supported objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action.²⁰ If no objections are filed, we will deem all further procedural steps to be waived and will proceed to enter a final order;

¹⁹ The original submission is to be unbound and without tabs on 8½" x 11" white paper using dark ink (not green) to facilitate use of the Department's docket imaging system. In the alternative, parties are encouraged to use the electronic submission capability available through the Dockets DMS Internet site (<http://dms.dot.gov>) by following the instructions on the web site.

²⁰ As we are providing to the filing of objections to this tentative decision, we will not entertain petitions for reconsideration of this order.

7. We grant the motion of the St. Louis Parties to file an otherwise unauthorized document; and

8. We will serve this order on American Airlines, Inc.; British Airways Plc; Continental Airlines, Inc.; Delta Air Lines, Inc.; Northwest Airlines, Inc.; United Air Lines, Inc. and British Midland Airways Limited d/b/a bmi british midland; the St. Louis Parties; the Houston Parties; Dallas/Ft. Worth International Airport; the Ambassador of the United Kingdom of Great Britain and Northern Ireland in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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Appendix 1 -- Initial code-share routings proposed by the Joint Applicants

The Joint Applicants propose initially to conduct code-share operations on:

A. Any Route between American's U.K. Gateways at Glasgow, London, and Manchester and the Following Points:

City	Country	Operating Carrier
Luanda	Angola	BA
Vienna	Austria	BA
Bahrain	Bahrain	BA
Dhaka	Bangladesh	BA
Brussels	Belgium	BA
Sofia	Bulgaria	BA
Zagreb	Croatia	BA
Larnaca	Cyprus	BA
Prague	Czech Republic	BA
Copenhagen	Denmark	BA
Cairo	Egypt	BA
Helsinki	Finland	BA
Bordeaux	France	BA
Lyon	France	BA
Marseille	France	BA
Nice	France	BA
Paris	France	BA
Toulouse	France	BA
Berlin	Germany	BA
Bremen	Germany	BA
Cologne/Bonn	Germany	BA
Dusseldorf	Germany	BA
Frankfurt	Germany	BA
Hamburg	Germany	BA
Hanover	Germany	BA
Munich	Germany	BA
Stuttgart	Germany	BA
Accra	Ghana	BA
Athens	Greece	BA
Budapest	Hungary	BA
Kolkata (Calcutta)	India	BA
Chennai (Madras)	India	BA
Delhi	India	BA
Mumbai (Bombay)	India	BA
Knock	Ireland	BA
Cork	Ireland	BA
Dublin	Ireland	BA
Shannon	Ireland	BA
Tel Aviv	Israel	BA
Bologna	Italy	BA
Genoa	Italy	BA
Milan	Italy	BA

Any Route between American's U.K. Gateways at Glasgow, London, and Manchester and the Following Points:

City	Country	Operating Carrier
Naples	Italy	BA
Pisa	Italy	BA
Rome	Italy	BA
Venice	Italy	BA
Verona	Italy	BA
Nairobi	Kenya	BA
Kuwait	Kuwait	BA
Riga	Latvia	BA
Luxembourg	Luxembourg	BA
Lilongwe	Malawi	BA
Mauritius	Mauritius	BA
Amsterdam	Netherlands	BA
Abuja	Nigeria	BA
Lagos	Nigeria	BA
Oslo	Norway	BA
Muscat	Oman	BA
Warsaw	Poland	BA
Lisbon	Portugal	BA
Doha	Qatar	BA
Bucharest	Romania	BA
Moscow	Russia	BA
St. Petersburg	Russia	BA
Jeddah	Saudi Arabia	BA
Riyadh	Saudi Arabia	BA
Mahe Island	Seychelles	BA
Singapore	Singapore	BA
Cape Town	South Africa	BA
Johannesburg	South Africa	BA
Barcelona	Spain	BA
Bilbao	Spain	BA
Madrid	Spain	BA
Gothenburg	Sweden	BA
Stockholm	Sweden	BA
Geneva	Switzerland	BA
Zurich	Switzerland	BA
Dares Salaam	Tanzania	BA
Bangkok	Thailand	BA
Istanbul	Turkey	BA
Abu Dhabi	U.A.E.	BA
Dubai	U.A.E.	BA
Entebbe/Kampala	Uganda	BA
Kiev	Ukraine	BA
Aberdeen	United Kingdom	BA
Belfast	United Kingdom	BA
Benbecula	United Kingdom	BA
Birmingham	United Kingdom	BA
Bristol	United Kingdom	BA
Cardiff	United Kingdom	BA
Edinburgh	United Kingdom	BA
Glasgow	United Kingdom	BA
Guernsey	United Kingdom	BA
Inverness	United Kingdom	BA

Any Route between American's U.K. Gateways at Glasgow, London, and Manchester and the Following Points:

City	Country	Operating Carrier
Isle of Man	United Kingdom	BA
Jersey	United Kingdom	BA
Leeds/Bradford	United Kingdom	BA
Lerwick/Tingwall	United Kingdom	BA
London	United Kingdom	BA
Manchester	United Kingdom	BA
Newcastle	United Kingdom	BA
Newquay	United Kingdom	BA
Plymouth	United Kingdom	BA
Southampton	United Kingdom	BA
Stornoway	United Kingdom	BA
Sumburgh/Shetland	United Kingdom	BA
Belgrade	Yugoslavia	BA
Pristina	Yugoslavia	BA
Lusaka	Zambia	BA
Harare	Zimbabwe	BA

B. Transatlantic Routes between the Following Points:

Route	Operating Carrier
Chicago, IL and Manchester, U.K.	American
Chicago, IL and Glasgow, U.K.	American
New York, NY and Manchester, U.K.	BA

C. Any Route between British Airways' U.S. Gateways at Atlanta, Boston, Chicago, Dallas/Fort Worth, Denver, Detroit, Houston, Los Angeles, Miami, New York/Newark, Orlando, Philadelphia, Phoenix, San Diego, San Francisco, Seattle, Tampa, Washington D.C./Baltimore and the Following Points:

City	Country	Operating Carrier
Abilene, TX	U.S.A.	American
Albany, NY	U.S.A.	American
Albuquerque, NM	U.S.A.	American
Amarillo, TX	U.S.A.	American
Anchorage, AK	U.S.A.	American
Austin, TX	U.S.A.	American
Baltimore, MD	U.S.A.	American
Bangor, ME	U.S.A.	American
Baton Rouge, LA	U.S.A.	American
Birmingham, AL	U.S.A.	American
Boise, ID	U.S.A.	American
Boston, MA	U.S.A.	American
Buffalo, NY	U.S.A.	American
Burbank, CA	U.S.A.	American
Burlington, VT	U.S.A.	American
Cedar Rapids, IA	U.S.A.	American
Champaign, IL	U.S.A.	American
Charlotte, NC	U.S.A.	American
Chattanooga, TN	U.S.A.	American
Chicago, IL	U.S.A.	American
Cincinnati, OH	U.S.A.	American

Any Route between British Airways' U.S. Gateways at Atlanta, Boston, Chicago, Dallas/Fort Worth, Denver, Detroit, Houston, Los Angeles, Miami, New York/Newark, Orlando, Philadelphia, Phoenix, San Diego, San Francisco, Seattle, Tampa, Washington D.C./Baltimore and the Following Points:

City	Country	Operating Carrier
Cleveland, OH	U.S.A.	American
College Station, TX	U.S.A.	American
Colorado Springs, CO	U.S.A.	American
Columbus, OH	U.S.A.	American
Corpus Christi, TX	U.S.A.	American
Dallas/Fort Worth, TX	U.S.A.	American
Dayton, OH	U.S.A.	American
Denver, CO	U.S.A.	American
Des Moines, IA	U.S.A.	American
Detroit, MI	U.S.A.	American
Dubuque, IA	U.S.A.	American
Duluth, MN	U.S.A.	American
El Paso, TX	U.S.A.	American
Fayetteville, AR	U.S.A.	American
Fort Lauderdale, FL	U.S.A.	American
Fort Myers, FL	U.S.A.	American
Fort Smith, AR	U.S.A.	American
Fort Wayne, IN	U.S.A.	American
Fresno, CA	U.S.A.	American
Grand Rapids, MI	U.S.A.	American
Green Bay, WI	U.S.A.	American
Greensboro, NC	U.S.A.	American
Greenville/Spartanburg, SC	U.S.A.	American
Harrisburg, PA	U.S.A.	American
Hartford, CT	U.S.A.	American
Honolulu Oahu, HI	U.S.A.	American
Houston, TX	U.S.A.	American
Huntsville, AL	U.S.A.	American
Indianapolis, IN	U.S.A.	American
Islip/Long Island, NY	U.S.A.	American
Jackson/Vicksburg, MS	U.S.A.	American
Jackson Hole, WY	U.S.A.	American
Jacksonville, FL	U.S.A.	American
Kahului Maui, HI	U.S.A.	American
Kalamazoo, MI	U.S.A.	American
Kansas City, MO	U.S.A.	American
Key West, FL	U.S.A.	American
Killeen, TX	U.S.A.	American
Knoxville, TX	U.S.A.	American
Kona Hawaii, HI	U.S.A.	American
La Crosse/Winona, WI	U.S.A.	American
Laredo, TX	U.S.A.	American
Las Vegas, NV	U.S.A.	American
Lawton, OK	U.S.A.	American
Lihue Kauai, HI	U.S.A.	American
Little Rock, AR	U.S.A.	American
Long Beach, CA	U.S.A.	American
Longview, TX	U.S.A.	American
Los Angeles, CA	U.S.A.	American
Louisville, KY	U.S.A.	American

Any Route between British Airways' U.S. Gateways at Atlanta, Boston, Chicago, Dallas/Fort Worth, Denver, Detroit, Houston, Los Angeles, Miami, New York/Newark, Orlando, Philadelphia, Phoenix, San Diego, San Francisco, Seattle, Tampa, Washington D.C./Baltimore and the Following Points:

City	Country	Operating Carrier
Lubbock, TX	U.S.A.	American
Madison, WI	U.S.A.	American
Marquette, MI	U.S.A.	American
McAllen, TX	U.S.A.	American
Memphis, TN	U.S.A.	American
Miami, FL	U.S.A.	American
Midland/Odessa, TX	U.S.A.	American
Milwaukee, WI	U.S.A.	American
Minneapolis/St Paul, MN	U.S.A.	American
Monterey, CA	U.S.A.	American
Nashville, TN	U.S.A.	American
New Orleans, LA	U.S.A.	American
New York, NY	U.S.A.	American
Newburgh, NY	U.S.A.	American
Norfolk, VA	U.S.A.	American
Oakland, CA	U.S.A.	American
Oklahoma City, OK	U.S.A.	American
Omaha, NE	U.S.A.	American
Ontario, CA	U.S.A.	American
Orange County, CA	U.S.A.	American
Orlando, FL	U.S.A.	American
Palm Springs, CA	U.S.A.	American
Peoria, IL	U.S.A.	American
Philadelphia, PA	U.S.A.	American
Phoenix, AZ	U.S.A.	American
Pittsburgh, PA	U.S.A.	American
Portland, ME	U.S.A.	American
Portland, OR	U.S.A.	American
Providence, RI	U.S.A.	American
Raleigh/Durham, NC	U.S.A.	American
Reno, NV	U.S.A.	American
Richmond, VA	U.S.A.	American
Rochester, MN	U.S.A.	American
Rochester, NY	U.S.A.	American
Sacramento, CA	U.S.A.	American
Salt Lake City, UT	U.S.A.	American
San Angelo, TX	U.S.A.	American
San Antonio, TX	U.S.A.	American
San Diego, CA	U.S.A.	American
San Francisco, CA	U.S.A.	American
San Jose, CA	U.S.A.	American
San Luis Obispo, CA	U.S.A.	American
Santa Barbara, CA	U.S.A.	American
Seattle/Tacoma, WA	U.S.A.	American
Shreveport, LA	U.S.A.	American
Springfield, IL	U.S.A.	American
St. Louis, MO	U.S.A.	American
Steamboat Springs, CO	U.S.A.	American
Syracuse, NY	U.S.A.	American
Tampa, FL	U.S.A.	American

Any Route between British Airways' U.S. Gateways at Atlanta, Boston, Chicago, Dallas/Fort Worth, Denver, Detroit, Houston, Los Angeles, Miami, New York/Newark, Orlando, Philadelphia, Phoenix, San Diego, San Francisco, Seattle, Tampa, Washington D.C./Baltimore and the Following Points:

City	Country	Operating Carrier
Texarkana, AR	U.S.A.	American
Toledo, OH	U.S.A.	American
Tucson, AZ	U.S.A.	American
Tulsa, OK	U.S.A.	American
Tyler, TX	U.S.A.	American
Vail/Eagle, CO	U.S.A.	American
Waco, TX	U.S.A.	American
Washington D.C.	U.S.A.	American
West Palm Beach, FL	U.S.A.	American
Westchester County, NY	U.S.A.	American
Wichita, KS	U.S.A.	American
St. Croix	U.S.A..	American
San Juan	U.S.A.	American
Aruba	Aruba	American
Buenos Aires	Argentina	American
Freeport	Bahamas	American
George Town	Bahamas	American
Marsh Harbour	Bahamas	American
Nassau	Bahamas	American
Barbados	Barbados	American
Belize City	Belize	American
Bermuda	Bermuda	American
La Paz	Bolivia	American
Rio de Janeiro	Brazil	American
Sao Paulo	Brazil	American
Calgary, AB	Canada	American
Montreal, QU	Canada	American
Ottawa, ON	Canada	American
Quebec, QU	Canada	American
Toronto, ON	Canada	American
Vancouver, BC	Canada	American
Santiago	Chile	American
Barranquilla	Colombia	American
Bogota	Colombia	American
Cali	Colombia	American
Medellin	Colombia	American
San Jose	Costa Rica	American
Casa de Campo	Dominican Republic	American
Puerto Plata	Dominican Republic	American
Punta Cana	Dominican Republic	American
Santiago	Dominican Republic	American
Santo Domingo	Dominican Republic	American
Guayaquil	Ecuador	American
Quito	Ecuador	American
San Salvador	El Salvador	American
Guatemala City	Guatemala	American
Port-au-Prince	Haiti	American
San Pedro Sula	Honduras	American
Tegucigalpa	Honduras	American
Kingston	Jamaica	American

Any Route between British Airways' U.S. Gateways at Atlanta, Boston, Chicago, Dallas/Fort Worth, Denver, Detroit, Houston, Los Angeles, Miami, New York/Newark, Orlando, Philadelphia, Phoenix, San Diego, San Francisco, Seattle, Tampa, Washington D.C./Baltimore and the Following Points:

City	Country	Operating Carrier
Acapulco	Mexico	American
Aguascalientes	Mexico	American
Cancun	Mexico	American
Guadalajara	Mexico	American
Leon/Guanajuato	Mexico	American
Los Cabos	Mexico	American
Mexico City	Mexico	American
Monterrey	Mexico	American
Puerto Vallarta	Mexico	American
Bonaire	Netherlands Antilles	American
Managua	Nicaragua	American
Panama City	Panama	American
Lima	Peru	American
Canouan Island	Saint Vincent and the Grenadines	American
Caracas	Venezuela	American
Maracaibo	Venezuela	American

Appendix 2 -- U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations and with all applicable U.S. Government requirements concerning security;¹ and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

¹ To assure compliance with all applicable U.S. Government requirements concerning security, the holder should, before commencing any new service (including charter flights) to or from a foreign airport, inform its Principal Security Inspector of its plans.

Appendix 3 -- Foreign Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security;¹
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.

¹ To assure compliance with all applicable U.S. Government requirements concerning security, the holder should, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, inform its Principal Security Inspector of its plans.

Appendix 4 -- Code-Share Conditions

The code-share operations authorized here are subject to the following conditions:

- (a) The statements of authorization will remain in effect only as long as (i) American and British Airways continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect;
- (b) American and/or British Airways must notify the Department no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served, which carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin. Such notices should be filed in Docket OST-2002-13861;
- (c) American and/or British Airways must notify the Department immediately if the code-share agreement under which these code-share services are operated is no longer in effect or if the carriers decide to cease operating all or a portion of the approved code-share services. We expect this notification to be received within 10 days of such non-effectiveness or of such decision. Such notices should be filed in Docket OST-2002-13861;
- (d) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; that the passenger liability of the operating carrier be unaffected; and that the operating carrier shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition;
- (e) The authority to operate to third countries is subject to the condition that any service provided under the statement of authorization shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (i) nothing in the award of this blanket statement of authorization should be construed as conferring upon American and British Airways rights (including code-share, fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier rights are limited unless American and British Airways notify us of their intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights;¹ and (ii) should there be a request by any carrier to use the limited-entry route rights that are included in American and British Airways' authority by virtue of the blanket statement of authorization granted here, but that are not being used by American and British Airways, the holding of such authority will not be considered as providing any preference for American and British Airways in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue; and
- (f) The authority granted here is specifically conditioned so that neither American nor British Airways shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

¹ The notice in paragraph (b) above can be used for this notification.